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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/730,423

12/08/2003

Janine M. Orban

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Maginot, Moore & Beck LLP
Chase Tower, Suite 3250
111 Monument Circle
Indianapolis, IN 46204-5109

EXAMINER

COMSTOCK, DAVID C

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

12/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/730,423	Applicant(s) ORBAN ET AL.	
	Examiner DAVID COMSTOCK	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-13,15-21,23,24 and 26-29 is/are pending in the application.
- 4a) Of the above claim(s) 26 and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-13,15-21,23,24,27 and 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 24 November 2008 has been entered.

Claim Objections

The text of canceled claims 5 and 22 should be removed (i.e. deleted) in order to comply with 37 CFR 1.121. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-13 and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Overaker (6,371,958; cited by applicant).

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Overaker discloses an implant scaffold device comprising an upper plate 82, a lower plate 84 and a load transfer structure 88 therebetween. The load transfer structure comprises individual supports with attachment structures 90 that are press fit into bores 103 in the lower plate. A fixation tube 170 extends from the lower plate and includes radially extending flanges or barbs 174 (see Fig. 21). The plates comprise a center bore, e.g. 24, and surrounding exposure bores, e.g. 22. The device is formed from porous resorbable polyester (see, e.g., col. 1, lines 5-20 and col. 7, lines 54-58). The assembled device can be considered integral and unitary. The device comprises a domed edge portion defining a convex surface against which an object is capable of articulating.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-21, 23, 24, 27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Overaker (6,371,958; cited by applicant) in view of Schwartz et al. (5,769,899).

Overaker discloses the claimed invention except for explicitly reciting that the supports could comprise rectangular walls extending radially outwardly. Schwartz et al. disclose a similar device comprising rectangular walls extending radially outwardly (see,

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e.g., Fig. 2). This is a known configuration in the art and amounts to nothing more than a simple substitution of a known configuration to obtain predictable results. Moreover, doing so could make the device more familiar and acceptable (e.g., for purchase) by surgeons already using the Schwartz et al. device. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the implant of Overaker with supports comprising rectangular walls extending radially outwardly in view of Schwartz et al. as doing so amounts to nothing more than a simple substitution of a known configuration to obtain predictable results. Moreover, as already noted, doing so could make the device more familiar and acceptable (e.g., for purchase) by surgeons already using the Schwartz et al. device.

Response to Arguments

Applicant's arguments filed 24 November 2008 have been fully considered but they are not fully persuasive.

The amendment clearly overcomes the rejection over the Bowman et al. reference. However, the Overaker reference is still seen as anticipating the claims as amended. For example, since the bores and load transfer supports of Overaker have a circular shape, they extend in all directions; therefore, they necessarily extend radially. Likewise the catch portion is a ledge and the mating catch portion can be considered the hook shaped prongs (e.g. considering their profile shape). The plates comprise at least a flat (e.g. lying in a plane) surface portion and also a flat overall configuration.

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The dome portion, as set forth above, extends substantially across an upper lateral/circumferential surface of the upper plate, as now claimed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710. Please leave a detailed voice message if examiner is unavailable. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/David Comstock/
Examiner, Art Unit 3733
/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733